

UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

CHAPTER 4

OFFICER-INVOLVED SHOOTING INCIDENT TRAINING REVIEW PANEL

Background: In the IPA's 1998 Year End Report, the IPA recommended that all officer-involved shootings resulting in injury or death be subjected to review whether or not a complaint is filed with the IPA or the PSCU. In July of 1999, the Chief of Police advised that in response to the IPA's recommendation he was establishing an officer involved shooting review process. The purpose of this review process would be to review all officer-involved shootings to determine if any training needs exist or if any changes need to be made to a current police policy or procedure. The Chief advised that this review process would be called the San José Police Department Officer-Involved Shooting Incident Training Review Panel.

The Chief of Police also advised

that the panel would consist of the Chief of Police, the Deputy Chief for the Bureau of Field Operations, the Independent Police Auditor, the Training Unit Commander, and a representative from the City attorney's Office. Once the panel is empaneled, the SJPd Homicide Unit that is responsible for investigating all officer-involved shootings that result in injury or death, provides the review panel with an oral and PowerPoint presentation. The review panel then considers all the information provided, and makes recommendations that can lead to the adoption of a new training plan or a change/development of a policy or procedure.

Update: During the past year SJPd officers were involved in eight shootings, seven of which resulted in a fatal wound to the suspect. Although the review panel has only been empaneled since August of 1999, the review

panel was able to review seven of the eight officer-involved shootings and provided recommendations for consideration. One shooting incident is still pending Grand Jury review, therefore has not been sent to the review panel for consideration. As a member of the review panel the Independent Police Auditor participated in all seven shooting reviews and provided input as necessary. Because the Chief of Police has indicated that he will be issuing a summary report to the city council on the issue of officer-involved shootings, the Independent Police Auditor will defer reporting on the actions of the panel until the Chief's report has been submitted to the city council.

BLOOD SAMPLES TAKEN BY FORCE

Update: In the IPA's 1997 and 1998 Year End Reports, the IPA reported on the status of the policy change for drawing blood

samples from uncooperative and/or combative suspects. The current procedure calls for putting a combative suspect in a body restraint called a WRAP, before taking the suspect to the preprocessing center for booking.



The WRAP consists of nylon with

Velcro straps and belts that wrap the person from the waist to their feet, thereby preventing the suspect from bending at the knee. Once the suspect has been placed into a designated holding cell at the preprocessing center, the lower straps of the WRAP can be loosened to allow the suspect to slightly bend at the knees and sit, while they await for the drawing of blood by the technician.

A close review of the SJPD policy and guideline for processing combative or disruptive suspects at the preprocessing center appears to have had a positive impact in decreasing the number

of complaints filed. As reported last year, the members of the department have positively received the duty manual changes that address the taking of blood samples. The IPA strongly encourages the department to continue its efforts to make the preprocessing center a safe and sterile environment. Although the IPA will continue to monitor activity at the preprocessing center, it is pleased that only one complaint has been filed alleging the forcible extraction of blood outside of the preprocessing center.



Blood extraction of combative suspects now takes place while suspects are handcuffed to the table.

CITIZEN REQUEST FOR OFFICER IDENTIFICATION

Update: The SJPD Duty Manual now directs officers to identify themselves when the public makes a request. Officers are required to provide the request-

SAN JOSE POLICE DEPARTMENT - INCIDENT CARD	
Records Division, 201 W. Mission St., San José, CA 95110	
CASE NUMBER: _____	DATE: _____
TYPE OF INCIDENT: _____	
OFFICER/BADGE #: _____	REPORT TAKEN: <input type="checkbox"/> YES <input type="checkbox"/> NO
ADDITIONAL TEL. NO(S): _____	
<p>INSTRUCTIONS: Retain this report receipt! You will need this information for your contact with the San José Police Department, your Insurance report, and tax purposes. For three or more additional stolen items, please report by mail using the above case number. To supply additional information concerning suspects, witnesses or victims, phone the San José Police Department Non-Emergency Line (277-8900). Under the joint powers agreement between the City of San José and the County of Santa Clara, for the purposes of Investigation and victim assistance, Information from your report may be entered into the Records Index System (R.I.S.). A fee will be charged for a copy of this report.</p> <p>INSTRUCCIONES: Guarde este recibo del reporte! Usted necesitará esta información para cuando se comunique con el Departamento de Policía de San José, para el reporte de su seguro, y para el reporte de sus impuestos. Para reportar tres o más adicionales artículos robados, favor de usar el correo y referirse al número del caso. Para dar más información con respecto a sospechosos, testigos, o víctimas, llame a la línea sin emergencia del Departamento de Policía de San José (277-8900). Bajo el acuerdo conjunto entre la Ciudad de San José y el Condado de Santa Clara, para propósitos de investigación y asistencia a las víctimas, información de su reporte puede ser incorporada al <i>Records Index System (R.I.S.)</i>. Se cobrará por una copia de este reporte.</p> <p>20Q-45A (7/98)</p>	
CHIEF OF POLICE	

SJPD Incident Card used for identification purpose.

ing person with an incident card that contains the officer's name and badge number. During the past year the IPA audited seven cases where the complainant alleged officers refused to identify themselves. Even though the IPA has raised this issue for several years, and the SJPd has made strong efforts to minimize this type of procedural complaint, it remains troubling that on seven occasions this type of procedural violation may have occurred once again. The IPA will continue to monitor this issue and will attempt to better use its database to track emerging or changing trends in the future.

ON SCENE INVESTIGATIONS FOLLOWING A USE OF FORCE

Background: As reported in the 1998 Year End Report, the IPA expressed concern with what appeared to be a significant number of cases that were being

evaluated and resolved based solely on the information provided by the officer and/or the complainant.

Although there has been some marked improvement in the collection of independent witness information, it appears a significant number of cases are still being resolved based on the available facts. Because complaint information generally comes from a complainant who is unhappy with a police contact, without the benefit of an independent witness, the issue becomes a matter of credibility, who are you going to believe? This type of conflict usually casts an eye of suspicion on unfavorable findings because the public for the most part believes police misconduct investigations have always been biased towards the officer.

By policy a supervisor must respond to an incident which

results in injury to a suspect or officer. The supervisor is responsible for assuring that physical evidence is collected and preserved and if witnesses are available, they are interviewed. In all cases, the supervisor is responsible for approving the Crime Report and/or other appropriate investigative reports prepared by the officer(s) documenting the use of force. The supervisor should investigate the circumstances and document in a supplemental report, the facts and his/her supervisory actions.

Update: Again this year, the IPA conducted a special audit of cases investigated after the new procedure was set in place to determine whether physical evidence is being collected adequately and how closely the new procedures are followed by officers and supervisors. A study of all the Unnecessary Force, Class I complaints² audited

2 In the 1996 Year End Report, the IPA implemented new goals for alleged use of force complaints. The uses of force complaints are divided into two categories: Class I and Class II. Class I use of force cases will involve those complaints in which the complainant required medical assistance for their injuries. It is anticipated that prioritizing these cases will expedite the investigative process while ensuring that evidence is preserved and witnesses are contacted in a more timely manner. The intent of this classification is to resolve serious use of force cases within 180 days. Class II cases will include those complaints in which the complainant did not require medical care. These Class II cases and all other cases will be expected to close within 365 days.

during 1999 revealed that supervisors were required to respond to the scene and/or collect evidence eight times. The IPA audit found that of the eight cases, only one appeared to not have a written report by the supervisor. In the case without an apparent written report, the PSCU investigation indicated that the supervisor responded to the hospital and taped an interview with the complainant, but evidence of a separate written report could not be verified. The compliance rate for supervisor intervention at use of force calls this year is outstanding, especially considering that in 1998, compliance was found only in approximately 50% of the required use of force incidents.

TIMELINESS

Update: This has been an area that has been revised in the past several years. Although the IPA has been tracking the time taken to complete an investigation since its inception, it has only been two years that the SJPD has been working with a protocol for completing cases in depart-

ments outside the PSCU. In 1998, there were 250 Formal complaints audited, of which 63 or 25% were not completed within the required goal of 365 days. In 1999, there was a marked improvement, of the 118 Formal cases audited, there was zero late case or 100% completion rate. All the cases were closed within the required goal of 300 days.

VEHICLE STOP DEMOGRAPHIC STUDY

On December 17, 1999, San José Chief of Police, William M. Lansdowne, released data from a study that was developed to address the issue of alleged racial profiling by members of the San José Police Department (SJPD). The study, which was initiated by the SJPD on June 1, 1999, covers a three-month period, from July 1, 1999 through September 31, 1999. It should be noted that the SJPD was the first police department in California to implement this type of study and provide data regarding vehicle stop activity by its officers. The SJPD should be

applauded and recognized for this effort.

The issue of racial profiling has long been a sensitive issue for citizens of color throughout the nation. Racial profiling occurs when a police officer initiates a vehicle traffic stop based primarily on the race of the driver and/or passengers. Although the term racial profiling has been used to describe unwarranted stops on minority citizens, the terms "Driving While Black" or "Driving While Brown" (DWB) have been used by the general public to describe how minorities believe they are characterized by law enforcement throughout the country. See illustration 4A for race/ethnicity comparison by United States, California and local percentages.

While statistics currently exists that suggests that racial profiling has been shown to have manifested itself in other parts of the country, reported data has been primarily anecdotal and in most cases reported findings have been based on perceptions,

theory and intuition. Even though the issue of racial profiling has been widely recognized as a major concern for the minority community, national efforts to address the issue have been slow in forthcoming.

Illustration 4A: Racial/Ethnicity

Racial/Ethnicity	San Jose ³	California ⁴	United States ⁵
African American	4.5%	7%	12.1%
Asian	21%	11%	4%
Hispanic	31%	30%	11.6%
European American	43%	51%	71.8%
Other	0.5%	1%	0.7%

*Chart developed by SJPD

On March 24, 1999, the SJPD announced its intention to conduct an in-depth study and analysis of vehicle stops conducted by its officers. The study was designed to gather statistical data about the race, gender, and age of each motorist stopped in San José. The statistical data was also intended to show the reason for the stop and the outcome of the encounter such as whether a citation was issued, or an arrest made. On December 17, 1999, the SJPD made the initial findings and data used to support assertions for the vehicle stops made by the officers. See illustration 4B for

Illustration 4B: SJPD Vehicle Stop Demographic

Racial/Ethnicity	Estimated % of San Jose Population	% of Total Number of Vehicle Stops Made	% Variation Between the Group's Representation in the Population and the Number of Vehicle Stops Made
African American	4.5%	7%	+2.5
Asian	21%	16%	-5
Hispanic	31%	43%	+12
American Indian	less than 1%	less than 1%	-
Other	less than 1%	1%	-
Pacific Islander	less than 1%	1%	-
Middle Eastern	less than 1%	3%	+2
European American	43%	29	-14
TOTAL	100%	100%	-

*Chart developed by SJPD

population percentage by ethnicity.

The report chronicles the process that was used to develop criteria

for data collection. New alpha codes were developed for use by officers once they clear a traffic stop to indicate the nature of the stop, and the gender and age of

3 SJPD estimate based upon 1990 U.S. Census statistics, and the 1995 California Department of Finance estimates. SJPD Vehicle Stop Demographic Study, December 17, 1999, page 4.2.

4 Based upon the 1995 California Department of Finance race/ethnicity estimates, with an estimated increase for the period of 1995 to 1999 made by the SJPD using the same projection ratios for the second half of the decade that the State used for the first half. SJPD Vehicle Stop Demographic Study, December 17, 1999, page 4.2.

5 October 1999, U.S. Census Bureau estimates. SJPD Vehicle Stop Demographic Study, December 17, 1999, page 4.2.

the driver. During the three-month period, 27,961 vehicle stops were made, of those, 4,449 stops were cleared with invalid disposition, leaving 23,462 to be used for analytical purposes in this study.⁶ However, of the 23,462 stops used in the study, 7,166 stops were listed as occurring in an unknown district. By eliminating the unknowns, it appears the study used 16,296 stops for analytical purposes.

In an attempt to facilitate an analysis of the racial/ethnic makeup of the more than 900,000 residents who live in the City of San José, data from the last national census was used to drive this study. Current census data has been viewed as problematic and growing concern and criticism has been expressed that racial/ethnicity categories do not reflect today's ever changing diverse society. Because of the importance of the study, and the fact that the SJPD was not in a position to wait for year 2000 census data, a statistical model

was developed to determine demographic racial/minority estimates within the City of San José. While the methodology used to develop demographic figures was not scientific, considerable weight was given to

providing figures that were more on the conservative side of the scale.

Once the model for determining the racial/ethnicity makeup for the City of San José was devel-

Illustration 4C: Vehicle Stops by Districts

Police Districts	No. of Stops for All Ethnicities	Hispanic Stops		Black Stops	
		No.	%	No.	%
A	601	96	16%	24	4%
C	1155	739	64%	69	6%
E	1123	472	42%	90	8%
F	891	312	35%	71	8%
K	1559	889	57%	109	7%
L	1711	856	50%	103	6%
M	1049	661	63%	73	7%
N	843	177	21%	42	5%
P	1248	412	33%	112	9%
R	723	202	28%	43	6%
S	1000	510	51%	70	7%
T	1043	209	20%	52	5%
V	1056	560	53%	63	6%
W	571	183	32%	40	7%
X	780	304	39%	78	10%
Y	934	205	22%	56	6%
DD	9	4	44%	0	0%
All Districts	16,296	7,007	43%	1,141	7%
Unknown	7,166	3,368	47%	502	7%

* District "DD" is the airport.

6 SJPD Vehicle Stop Demographic Study, December 17, 1999, page 3.1.

oped, statistical data on drivers stopped was now ready to be analyzed. A comparison between the different racial/ethnic drivers stopped in San José concluded that Hispanics and Blacks are stopped at a rate higher than their corresponding percentage of the total population. Illustration 4C reflects the percentages of people stopped by racial/ethnicity.⁷

IPA ANALYSIS

The SJPD study attributes the increased number of stops on minorities to socio-demographic realities of the city and the necessity by the SJPD to deploy more officers accordingly. The hypothesis raised in the study, is that because more officers are assigned to higher crime sectors/precincts; therefore, minorities who live in these neighborhoods in greater numbers are more likely to get stopped.

The location of 31% or 7,166 of

the 23,462 stops made could not be identified, and one cannot assume that the 31% of missing data was equally distributed. This high percentage for unknown stop locations make it difficult to draw conclusions.

RECOMMENDATIONS

1. The current report covers only a three-month period, the IPA concurs with the SJPD that statistical data should be gathered for a minimum of one year.
2. Develop a process for determining how the individual stopped was treated, i.e., was there a search. This would provide evidence of unequal treatment if such is occurring.
3. Demographic figures for the number of licensed drivers within each racial/ethnic group should be identified within each police district i.e., of the 31% Hispanic population in

San José, what percentage is of driving age? Currently, Hispanics are stopped 12% more often than the number of Hispanics living in San José. However, over 30% of Hispanics nationwide are under 15 years of age⁸. Therefore, the percentage of Hispanics stopped is more likely to be higher than 12% since a great percentage of Hispanics are too young to drive. Those Hispanics too young or not driving are factored into the population totals used in the SJPD study.

⁷ SJPD Vehicle Stop Demographic Study, December 17, 1999, page 5.1.

⁸ U.S. Census Bureau, March 1993, Current Population Survey, "The Hispanic Population."

